APPEAL NO. 032449
FILED NOVEMBER 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on September 4, 2003. The sole issue before the hearing officer was whether or not the appellant (claimant herein) was entitled to supplemental income benefits (SIBs) for the first quarter. The hearing officer decided that this issue was not ripe for adjudication and the hearing officer remanded the case to a benefit review conference (BRC) for further development of the record because the claimant had not been assigned an impairment rating (IR) by a designated doctor. The claimant appeals, arguing that the issue of entitlement to SIBs was ripe because the claimant had received a 15% IR from her treating doctor, which had never been disputed. The respondent (carrier herein) replies that the attorney for the claimant stated at the CCH that he would file the proper form to have his client examined by a designated doctor, but instead filed an appeal. The carrier contends that the treating doctor's rating was not valid because the treating doctor did not use the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides).

DECISION

Reversed and remanded.

Essentially what happened in this case was that at the beginning of the CCH the carrier's attorney refused to stipulate that the claimant had a 15% IR, stating that he did not know whether or not there had been a designated doctor in this case. The carrier also argued that the treating doctor used the wrong edition of the AMA Guides in assessing an IR. The hearing officer then went off the record for a discussion with the parties. The hearing officer then comes back on the record and announces that she cannot continue with the hearing because there was no valid IR and that she is sending the case back for a BRC.

The problem we have with reviewing this case is that we have an appeal but really have no record. No testimony was taken at the CCH and no evidence was admitted. We do not even have the name and address of the carrier's registered agent for service. The parties are making all sorts of factual assertions, but we have no evidence on the record. We have no idea what transpired while the parties were off the record. We do know that after coming back on the record, there was no agreement of the parties on the record as to any matter.

Thus, we have no basis to review the decision of the hearing officer that the issue of SIBs was not ripe. Under these circumstances, we have no choice but to reverse the decision of the hearing officer and remand the case for her to develop the record.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Edward Vilano
Appeals Judge